

EX PARTE OR LATE FILED

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December 15, 1999

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Ms. Magalie Roman Salas
Secretary

Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Ex Parte Filing -- WT Docket 99-168

Dear Ms. Salas:

This filing, made on behalf of Southern Communications Services, Inc. d/b/a Southern LINC ("Southern"), is to follow up on the various *ex parte* filings which have been made in the above-referenced proceeding recommending that the Commission allocate 6 MHz of spectrum at the edges of bands for Part 90 eligibles in the private radio services.¹ Parties are also suggesting that this 6 MHz of spectrum be auctioned to a Band Manager.

Southern's position in this proceeding has been that the Commission should allocate 18 MHz of spectrum for SMR services. Because it appears that the Commission is considering whether or not the proposed 6 MHz "private" allocation will be sufficient to provide for the spectrum needs of SMR carriers, which typically provide service to Part 90 eligibles as well, Southern feels compelled to comment on these proposals.

It has been suggested that the Band Manager be used as a type of spectrum administrator for this 6 MHz allocation. Because the Band Manager concept is new, and very little detail was provided in the NPRM on this concept, it is difficult to meaningfully comment on the Band Manager. Presumably, the Commission is seeking to adopt a mechanism that would allow the spectrum to be purchased at auction (by the Band Manager) but used only by Part 90 entities that have the need for wireless systems. As an initial matter, it is not clear to Southern that the Commission has the legal authority to authorize Band Managers in the manner being contemplated. The NPRM does not provide any analysis of the legal basis for the Commission to create such entities, nor do the *ex parte* presentations on the subject address this in any

¹ See *ex parte* filings of Motorola and the Industrial Telecommunications Association (ITA).

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meaningful way. It is not clear what the regulatory status of the Band Manager or the parties who actually use the spectrum under a lease arrangement will be. One approach being considered appears to contemplate Band Managers being able *to bid* on the spectrum, *but not put it to commercial use* in their own systems. The Congressional directive in the Balanced Budget Act that this spectrum be allocated for *commercial use* is negated by an approach that would permit entities to bid on this spectrum, but at the same time prohibit them from using the spectrum for commercial service in their own systems. See 47 U.S.C. § 337(a)(2).

These legal issues notwithstanding, if the Commission adopts a Band Manager concept for this 6 MHz allocation, it should create as much flexibility as possible, to see how the concept best serves the Part 90 users. For example, Southern believes that SMR carriers should be allowed to be Band Managers and incorporate this spectrum into their existing networks as long as the carrier agrees to use the spectrum to serve only Part 90 eligibles. If the Commission decides to require that the Band Manager reserve a portion of the spectrum for "lease-only" use, this portion should be no more than one third of the Band Manager's licensed spectrum. Southern believes this is a large enough set-aside to allow for significant use by entities needing customized systems. The Band Manager should be free to determine how and where the "lease-only" set aside would be made available. Since there is no way to predict where companies using "lease-only" spectrum will need frequencies, the FCC should not constrain the Band Managers' flexibility by adopting rules on exactly how the "lease-only" spectrum should be deployed. In addition, if a Band Manager is required to hold spectrum for lease to others who will build their own infrastructure, the Band Manager cannot be held to any construction or build-out requirement since it will act purely as an administrator. Southern believes that the geographic markets based on the smaller Economic Areas (EAs) work best for this market segment and will allow for the widest possible participation in any auction. At most, the market blocks should be no larger than the Major Economic Area (MEA) blocks suggested in the NPRM.

Southern continues to believe that a much more substantial allocation of spectrum should be made for the needs of SMR carriers. As a provider of state-of-the-art digital dispatch and interconnected wireless service, Southern currently provides service to the very same Part 90 eligibles that would benefit from the 6 MHz allocation. Many of these traditional Part 90 entities, including public safety entities such as police departments, local governments and emergency services, find Southern's digital wide-area service to be the best option for meeting their private radio needs. Therefore, it does not make sense for the Commission to preclude carriers such as Southern, who provide service to these very same entities, from utilizing this spectrum to meet their needs.

Finally, Southern does not agree with some commenters that this allocation should be limited to companies providing dispatch-only services. In today's fast-moving communications

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environment, customers are demanding that the dispatch function be bundled with other services, such as interconnected mobile telephone and data services. In fact, Southern believes demand for two-way data with internet access will be a major growth driver in the dispatch market segment. In this environment, it does not make sense for the Commission to limit the functionality of the communication devices that the Part 90 customer base may require. Therefore the Commission should not adopt a dispatch-only limitation on any allocation that may be made for Part 90 eligibles.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Christine Gill". The signature is fluid and cursive, with the first name "Christine" written in a larger, more prominent script than the last name "Gill".

Christine M. Gill
McDermott, Will & Emery
Attorneys for
Southern Communications Services, Inc.

cc: Office of the Secretary (Original + 1 copy)
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